

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ORRIN TYLER COLBOURN,

Plaintiff,

v.

BUTTE COURTHOUSE, et al.,

Defendants.

No. 2:23-cv-2316 CKD P

ORDER

Plaintiff is a Butte County Jail prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

1 The court is required to screen complaints brought by prisoners seeking relief against a
2 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
3 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
4 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

6 The court has reviewed plaintiff’s complaint and finds that it fails to state a claim upon
7 which relief can be granted under federal law. Plaintiff’s complaint must be dismissed. The
8 court will, however, grant leave to file an amended complaint.

9 Plaintiff complains about being denied a parole hearing but fails to point to anything
10 suggesting that the denial of a parole hearing was a result of a violation of federal law. If
11 plaintiff chooses to amend the complaint, plaintiff must demonstrate he has suffered a deprivation
12 of plaintiff’s federal rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, in his
13 amended complaint, plaintiff must allege in specific terms how each named defendant is
14 involved. There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link
15 or connection between a defendant’s actions and the claimed deprivation. Rizzo v. Goode, 423
16 U.S. 362 (1976). Furthermore, vague and conclusory allegations of official participation in civil
17 rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

18 Plaintiff is informed that when a state prisoner challenges the legality of his custody and
19 the relief he seeks is the determination of his entitlement to an earlier or immediate release, his
20 sole federal remedy is a writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973).

21 Also, as to the contents of an amended complaint, the court cannot refer to a prior
22 pleading in order to make plaintiff’s amended complaint complete. Local Rule 220 requires that
23 an amended complaint be complete in itself without reference to any prior pleading. This is
24 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.
25 Rhay, 375 F.2d 55, 57 (9th Cir. 1967).

26 Finally, plaintiff requests the appointment of counsel. District courts lack authority to
27 require counsel to represent indigent prisoners in section 1983 cases. Mallard v. United States
28 Dist. Court, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an

1 attorney to voluntarily represent such a plaintiff. See 28 U.S.C. § 1915(e)(1). Terrell v. Brewer,
2 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir.
3 1990). When determining whether “exceptional circumstances” exist, the court must consider
4 plaintiff’s likelihood of success on the merits as well as the ability of the plaintiff to articulate his
5 claims pro se in light of the complexity of the legal issues involved. Palmer v. Valdez, 560 F.3d
6 965, 970 (9th Cir. 2009) (district court did not abuse discretion in declining to appoint counsel).
7 The burden of demonstrating exceptional circumstances is on the plaintiff. Id. Circumstances
8 common to most prisoners, such as lack of legal education and limited law library access, do not
9 establish exceptional circumstances that warrant a request for voluntary assistance of counsel.

10 Having considered the factors under Palmer, the court finds that plaintiff has failed to
11 meet his burden of demonstrating exceptional circumstances warranting the appointment of
12 counsel at this time.

13 In accordance with the above, IT IS HEREBY ORDERED that:

14 1. Plaintiff’s request for leave to proceed in forma pauperis (ECF No. 5 & 6) is granted.

15 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
16 shall be collected and paid in accordance with this court’s order to the Butte County filed
17 concurrently herewith.

18 3. Plaintiff’s complaint is dismissed.

19 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
20 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
21 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
22 number assigned this case and must be labeled “Amended Complaint.” Failure to file an
23 amended complaint in accordance with this order will result in a recommendation that this action
24 be dismissed.

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5. Plaintiff's request for the appointment of counsel is denied.

Dated: January 4, 2024



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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